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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
Jean-Christophe SIMON, et al. : GROUP ART UNIT: 1615
SERIAL NO: 10/687,645 :
FILED: OCTOBER 20, 2003 : EXAMINER: MERCIER, MELISSA S.
FOR: COSMETIC COMPOSITION :
COMBINING AT LEAST TWO :
DYES INCLUDING AT LEAST ONE :
PHOTOCHROMIC DYE

DECLARATION UNDER 37 C.F.R. 1.132

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

I, GIAIER-DUFURNIER, hereby declare:

1. I am employed by L'ORÉAL as an engineer and have experience in the field of cosmetics preparing and analyzing compositions.
2. The following observations and experiments were carried out by me or under my direct supervision and control.
3. The following compositions were prepared.

Comparative Composition (containing Lagrange <i>et al.</i> photochrome)	Invention Composition
Lipstick* Photochrome**at 2% Goniochromatic***at 3%	
	Lipstick* Photochrome**** at 2% Goniochromatic***at 3%

4. The lipstick base (*) of both the invention composition and the comparative composition was as follows:

- octyl-2 dodecanol 0.5%
- hectorite modified by di-stearyl di-methyl ammonium chloride 0.6%
- liquid lanoline 27.2 %
- microcrystalline wax 10,5 %
- poly-glycerolated bee wax (3 moles) 4.2%
- acetylated lanoline 6.7%
- Arara oil (oleic acid esters) 13.5%
- oxypropylenated lanoline wax (5 op) 6.7%
- Oleyl erucate 13.5%
- oleic-linoleiclinolenic acid triglycerides 1.7%
- palmitiqueoleic-linoleic acid triglycerides 13.5%
- sodium salt of hyaluronic acid 0.1%
- preservatives 0.1%
- vitamin 0.5%
- filter UV 0.7%
- Seacopearl Fantastico rose® 3.0% (goniochromatic agent)

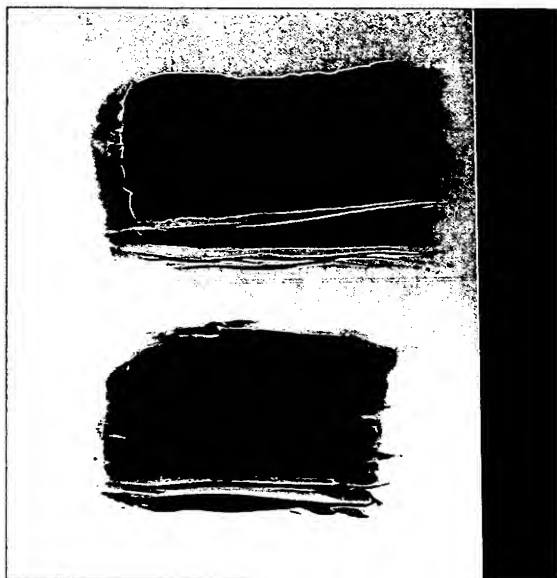
5. The photochrome (**) representative of those disclosed in Lagrange *et al.* (US patent 6,123,952) in the Comparative Composition was a derivative of the diarylethene family manufactured by Yamada Chemical, under the name Diarylethene #1-3. This photochrome was present in the Comparative Composition in an amount of 2% by weight of the entire weight of the lipstick.

6. The photochrome (****) representative of the present invention was a derivative of naphthopyrane, manufactured by James ROBINSON under the name Reversacol Flame®. This photochrome was present in the Invention Composition in an amount of 2% by weight of the entire weight of the lipstick.

7. The Invention Composition and the Comparative Composition were subjected to the following protocol. On a contrast card, the Invention Composition and the Comparative Composition were placed side by side. A digital photo was taken ($t = 0$). The contrast card was exposed to UV radiation emitted at 3cm by a UVA 365 nm source equivalent to a lighting level of 2watt/cm². A digital photo was taken after 3 minutes ($t = 3$ min.).

8. The results of this testing are reproduced below.

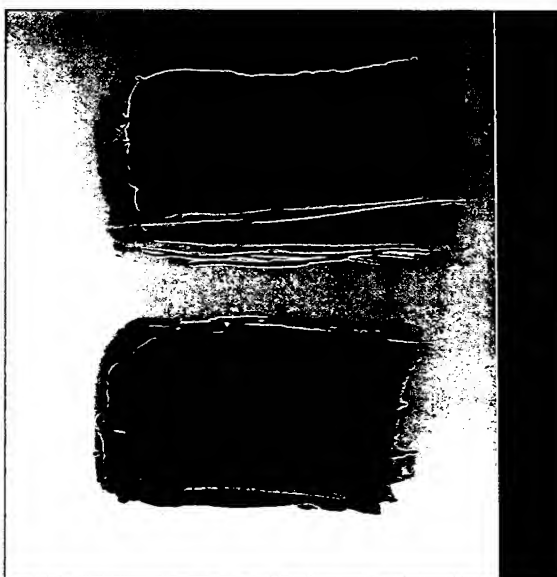
T = 0



Comparative Composition

Invention Composition

T = 3 min



Comparative Composition

Invention Composition

9. The above pictures clearly demonstrate the dramatic cosmetic difference associated with the present invention (combining a naphthopyrane derivative photochrome with a goniochromatic agent) as compared to a composition containing a diarylethene derivative

according to Lagrange *et al.* and a goniochromatic agent. As demonstrated by these pictures, a significant color difference and an original dynamic effect in terms of color and shine of the invention composition were observed after 3 minutes of exposure to UV radiation. In stark contrast, the comparative composition containing a representative Lagrange *et al.* photochrome slightly darkened after UV exposure.

10. The improved color difference and original dynamic effect in terms of color and shine obtained with the invention composition are representative of the present invention. That is, I would expect compositions containing the claimed naphthopyrane derivative photochrome and the claimed goniochromatic agent to possess improved color difference and/or original dynamic effect properties like those of the exemplified Invention Composition. I have no reason to expect otherwise.

11. The difference in color difference and/or original dynamic effect properties between the Invention Composition and the Comparative Composition discussed above demonstrate the surprising and unexpected benefit derived from having both the claimed naphthopyrane derivative photochrome and the claimed goniochromatic agent in the Invention Compositions.

12. The improved color difference and/or original dynamic effect properties are commercially significant. Clearly, makeup products such as lipsticks providing better color properties upon application to skin or lips are more commercially viable than compositions having inferior color properties.

13. The undersigned petitioner declares further that all statements made herein of her own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under

Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

14. Further deponent sayeth not.

GIRIER-DJOURNIER
Name


Signature

Date Vendredi 6 Février 2009